

# Negotiation



Negotiation (or Bargaining) is inseparable from Struggle and should not be confused with Conflict Resolution, which aims at resolving the underlying antagonism.

Negotiation is the process whereby people or groups involved in a conflict find a new basis for exchanging property, services or rights, without necessarily dealing with the underlying basis for conflict. A union negotiator, for example, is not trying to do away with the class struggle, but simply to get a better pay deal for workers. While negotiation may take place when warring armies agree on a peace treaty or in diverse situations, the archetypal negotiation is that between buyer and seller in the market place, two parties alienated from each other, each trying to use the other to meet their own needs, as Marx depicted in Comment on James Mill.

Negotiation *may* occur where the antagonism is *inessential*, as part of a process of creating the basis for Collaboration and resolving the underlying conflict. However, Marxists regard the class conflict between capital and labour as the only conflict which *cannot* be resolved within capitalism and negotiations which occur within the framework of the class struggle are *not* aimed at resolving the class conflict. Such negotiations are aimed primarily at strengthening the working class and weakening the bourgeoisie, both in the short-term (with higher wages and more leisure time) and in the long-term (by increasing the self-confidence and organisation of the working class).

## Negotiation and Struggle

(1) Thus, the first thing to know about negotiation is that it is *inseparable* from struggle. That is, negotiations begin as soon as the dispute surfaces and every action workers take during the agitation and preparation for industrial action and so on are *part of* the negotiation process. Likewise, negotiations are themselves a form of struggle, and as such subordinate to the whole strategy of struggle.

(2) *Balance of Power*. No real negotiation can occur except between parties who are more or less of *equal strength*. There is no good negotiating with an employer unless, by one way or another, the workers can muster a balance of power. Agitation and industrial action is aimed at *equalising* the balance of power so effective negotiation can take place.

## Information, Secrecy and Deception

(3) Negotiation involves *deception*. Where negotiation is used as a means of furthering the class struggle this may not be problematic, but where negotiation is part of a process of conflict resolution, then deception is not permissible. When you are representing workers to their employer, then you are duty bound to get the best deal possible, and such negotiations always involve a measure of mutual deception. This deception takes many forms, from making the opponents believe that you are just about to walk out and that your members are very angry when they are in fact ready to settle, to just keeping a poker face when one of your colleagues blurts out something they shouldn't have. The problem with deception in union negotiations is that while it is possible and legitimate to deceive the bosses, it is absolutely unacceptable to deceive the union members you represent, and since union general meetings held to consult with members and report back on progress with negotiations are inevitably reported in full to the bosses, the scope for deception is extremely limited, and is mainly limited to keeping the bosses guessing about your own likely behaviour.

(4) *Secrecy*. The bosses will often try to get union negotiators to agree to secrecy or on the other hand to joint communication of the progress of negotiations. Both secrecy and joint communiqués are unacceptable. A negotiator must *never* agree to anything which restricts their free and open communication with the people they represent. Secrecy is an act of deception against the workers and is unacceptable. Further, secrecy always *binds* you to the person with whom you share a secret and lays you open to manipulation.

(5) *No Secret Meetings*. You should never meet the boss (or their representative) alone. Always have at least one other person with you, otherwise a negotiator can

be compromised. Even then, the boss can just phone you up and make you a suggestion to you over the phone. Workers are rightly suspicious of any private contact between the boss and one of their negotiators. One should not however be overly dogmatic about this. Sometimes the boss wants to make a concession but is nervous about how it will be received; maybe you'll throw it back in their face? maybe they need advice on how to word it? Even the reverse can also apply. It should be obvious what is the dividing line between betrayal and legitimate exploration of the boss's position. But avoid like the plague making contact alone, and fully and immediately disclose the substance of any such contact to the other negotiators as soon as it occurs.

(6) *Reference Group*. Generally speaking, most of the negotiating actually happens *outside* the negotiating room, in the workplace. Having a reference group of trusted union members who can advise the negotiators on the value of proposals without having to float them in public is therefore an asset as there are often circumstances where public consultation is not possible.

(7) *Information*. The importance of accurate and comprehensive *information* cannot be overstated. You must know everything about the boss's financial position, their productivity, the number of employees and so on. The bosses usually have better information than the unions, and this is a big advantage for them in negotiations. Unions must call on their members in administrative and secretarial positions and so on to help gather the necessary information to support negotiations.

(8) *Reporting Back*: It is essential for union negotiators to report back to the whole membership frequently, objectively and openly. Union negotiators are often tempted to cast the employers' stance in negotiations in a particularly bad light in order to strengthen members' resistance. This is a dangerous tactic as is any kind of misrepresentation in reporting back. The bosses will always find their own means of communicating their position, and if negotiators' reports are not seen to be fair and honest, their position is undermined. Furthermore, when suddenly there is a basis for a deal and negotiators start painting employers' position as acceptable, members will be rightly suspicious about what brought about such a dramatic change in the merits of the bosses' offer.

Negotiations which are very protracted may make frequent reporting back difficult as people get bored with the slow progress. In this case it is necessary to vary the intensity of reporting back so as to clearly indicate when things are critical and when they are not.

(9) *Recommending Offers/Deals*. Generally speaking the negotiator should never recommend a management offer to the workers. A negotiator is a representative

not a mediator. It is the negotiator's responsibility to clearly and objectively present and explain what the boss is offering, and its pros and cons. The job of formulating motions for acceptance or rejection should go to someone not involved in the negotiations. This is because the very job of negotiating can generate a commitment on the part of the negotiator to what they have extracted from talks, and this is halfway to becoming a mediator or go-between, rather than a representative of the workers.

## **The Negotiators**

(10) *The Negotiating Team*. Choosing a good team is vital. A good negotiating team must be made up of people who trust each other as well as being worthy of trust by the people they represent. Making up teams with a balance of left/right or militant/moderate can therefore be dangerous. A mixture of personality types is helpful though: someone who can get angry, someone who is very knowledgeable, someone who is trusted by management, someone with an eye for detail, and so on. It is very useful for the team to agree who is to speak, or at least who is to speak *first*, though a division of labour is equally useful. What is *not* useful is people speaking up at the negotiating table unexpectedly or on impulse or contrary to agreed negotiating tactics.

(11) *Unity*. At the same time, tactics like "good-cop-bad-cop" are always an asset, and while actual unity is important, the appearance of unity is not always the best policy.

(12) *Personality*. Negotiators need to be able to adopt a variety of personalities; you need to be able to get so angry the boss will be in fear of their personal safety; to be so obstinate that the boss despairs of ever getting anywhere; to be so amenable and flexible that the boss is confident that agreement will be reached; to be so boring and longwinded that they would rather make a deal than listen to any more of you. Whatever it takes.

(13) *Saying "No" three times*. It is said that most people cannot say "No" more than three times. Your professional opponents in negotiations may be more sturdy than that, but it is always worth asking for something and getting "No" for an answer a fourth time before trying another tack. For your own part, you must be prepared to say "No" just as often as necessary.

(14) *Joint Negotiations*. Workers are often represented by more than one union at negotiations and it is absolutely essential that the different groups of representatives reach agreement with each other before opening negotiations with the bosses. While different unions may have different objectives, there must always

be an agreement on tactics and strategy which meets the legitimate needs of all the participating unions, or at least ensures that the objectives of one union are never undermined by the actions of another. Joint report-backs to joint union meetings should be arranged wherever possible to maintain the unity of workers' ranks.

(15) *Observers*. In order to maintain good links with the workers being represented, to retain their confidence and to keep the other side constantly aware of the workers' commitment, it is a good idea to bring ordinary workers into negotiations as observers. Care needs to be taken however. An ordinary worker who seems a real stalwart at the union meeting, may turn to putty at the negotiating table and compromise the negotiators' position. Having observers and/or a reference group is particularly important in communicating with the workers when conditions make public consultation difficult.

(16) *Third Parties*. There are always third parties involved in negotiations. The most important third party may be the *non-union workers*. In general, the union workers should seek to *lead* the non-union workers and maintain their support for what the union is doing. If the union cannot do this, then the boss will certainly be ready to use the non-union workers to undermine the union. But in general, non-unions workers will be more likely to support the union than the boss, and if they do, this greatly strengthens the union. The other important third party are the workers in related companies and also their employers and the company's customers. All these third parties must be taken account of in negotiations and struggle.

(17) *Who is negotiating with whom?* Usually you are not actually negotiating with the boss, you will be facing a professional negotiator who has no real authority to say yea or nay. You must make it absolutely clear that you regard this as laughable and repeatedly demand to speak to the real decision-maker.

(18) *Speaking to the boss*. Nevertheless, in reality you will probably only get to negotiate with the boss when the negotiations are at the most critical stage. This is because the boss is usually a hopeless negotiator. Being someone used to issuing orders they have no idea how to negotiate with equals. If they enter the negotiations at a critical moment they are equally likely either to give everything away or throw everything up and abuse you and create the trigger for an all-out strike.

(19) *Mercenaries*. On the other hand, when negotiating with professionals – personnel officers and such like – you should always remember that they are *not* the bosses, but have interests distinct from those of the boss. The personnel officer may agree to things that are not in fact in the boss's best interests at all, so it

always worth looking for common interests with those who are sitting across the table from you. It's their problem to handle the boss, not yours.

(20) *Independence*. For their part, the bosses will always try to pick the union team for you, try to keep the union team as small as possible and will do everything in their power to isolate the negotiators from the people they represent and to manipulate them. *Never* allow the bosses to restrict or interfere with the size and composition of your team, or bring supposedly "independent", non-union people to the table except as part of *their* team.

(21) *"Sorry, the members wouldn't wear it"*. Keeping the principal out of the bargaining room works both ways. Whereas the other side just have to report to the CEO, or at most a Board of Directors, you may have to take directions from the whole workforce. A negotiator can never agree to anything except provisionally. When the boss makes a "reasonable offer", you can say "thank you very much, that's a fine offer" and then after meeting with the members you can come back and say "Sorry, the members wouldn't wear it". This mantle of *powerlessness*, the inability to accept or reject anything offered by the other side, in fact gives the workers' negotiator *great* power, so long as the members hold their resolve. Rest assured the bosses will not be asking for your members to come along and join in the negotiations personally!

## **Your Objectives**

(22) *Preparing your claim*. Long before formal talks begin, the unions must prepare their claim. The wider and more thorough the consultations in formulating the claim the better. The attitude of the workers to every possible proposal and counter-proposal should be measured and their attitude to every possible compromise tested before talks start. The process of formulating the claim needs to establish certain things, not necessarily in public:

(23) The *"Bottom Line"*. The so-called "bottom line" is a myth. What it refers to is the worst outcome that you are prepared to accept when you start bargaining. Generally worst acceptable outcome is not known before the last day of the dispute and it is certainly impossible to discuss it in public, and in general attempts to work out in advance what a "bottom line" might be are confusing at best. The bosses will always want to know what it is, and the answer will always be that it is the full claim.

(24) *No-No's and Core demands*: It is however very useful to know what concessions if any are possible, what concessions are absolutely ruled out and what gains would be particularly attractive. In general, there should be no thought of concessions.

Why negotiate to give things away? But there may be things which the bosses want, which are actually of no value to the workers. In this case it would be just stupid to refuse to give way. No need to signal such possible “concessions” in advance of course. On the contrary, like Br’er Rabbit, negotiators should be on their high-horse about possibility of such non-concessions. But at the end of the day it is good to be able to give up something you never wanted anyway. Likewise there may be benefits which the workers want, and which cost the bosses nothing. Of course, no interest should be shown in such benefits until the bosses are begging you to accept them.

(25) *Legitimate Needs*. Whether negotiation are part of the class struggle or whether they are part of a conflict resolution, a negotiator should from the very outset make it clear to their opposite numbers what are their legitimate needs and objectives in the negotiations and endeavour to determine and clarify those of the other side. So for example, what is the core objective of the workers, their main grievance, and on the other hand, how much of a pay rise can the boss really afford; what particular concessions are really unworkable for the employer, what improvements in work practices are really necessary for them. To deceive people in respect to these *essentials* helps no-one, even when the negotiations are in the eye of the storm of the class struggle. If the bosses don’t know what you really want, they will not be able to satisfy you, even if they wanted to.

This applies only in relation to the *essence* of what is under negotiation, not to the exact form in which the needs in questions can be met or the scope and breadth of changes that may be desired.

In general, people are not aware of their own legitimate needs when they begin negotiations, being concerned instead with all sorts of fears, preconceptions, prejudices and dreams. The aim of the other party in the negotiations is not actually to deny someone what they want, but rather to find out what their legitimate needs really are and help them to understand it themselves, to lead them to where they want to be, even though they didn’t realise it.

(26) *Best Alternative to a Negotiated Agreement*. While the “bottom line” is a confusing myth, it is essential that negotiators at all times are clear about their Best Alternative to a Negotiated Agreement. That is, if it is not possible to get a negotiated agreement, what is the best alternative? Staying where you are? Going on indefinite strike? Driving the company to bankruptcy? Going to court? The “BATNA” functions as the yard-stick by means of which what is on offer by means of negotiation can be judged and a decision made as to whether or not it is worth going on with negotiations. If you would rather walk-out than continue talking, you

may find that the other side would prefer *not* to stop talking and may be willing to make a concession.

(27) *Ambit*. Ambit is where a negotiator asks for more than they are willing to accept, so as to give the appearance of “meeting halfway” but still getting what they wanted all the time. In this sense, ambit is a waste of time which fools no-one. However, ambit should always be used in a *qualitative* or lateral sense, i.e., negotiators should ask for *everything* they could possibly want, in the expectation that some things will not be achievable and others will be easily achieved, but it is unwise to double-guess negotiations by asking only for that which you think is achievable. Put everything on the table. Settlements to complex conflicts are usually made up of a whole menu of give and take. The boss may not be willing to make a 10 per cent pay rise, but a 3 per cent pay rise plus 3 days holiday plus free use of the company’s vehicles may prove very acceptable. So, a union negotiator should ask for it all and find out later what mix of benefits is possible. The composition of the final deal can often be quite surprising. But asking for 10 per cent when you want 5 per cent is of very limited value unless you *know* the boss can afford it.

Generally speaking an agreement is not made halfway between the positions of each of the two sides but at some “third point”. It is not generally possible to see where this third point will be at the outset of negotiations.

(28) The “*Win-win Situation*”. This term is usually the subject of derision among union militants, because all socialists understand that the interests of labour and capital are ultimately irreconcilable, and workers never win until that fateful day when capitalism is overthrown. Nevertheless, there are two basic things about this idea which retain their validity; firstly, as said above, agreements are usually made not by 50-50 compromise, but at some third point where both sides have their legitimate needs met by the agreement; secondly, both sides need to *feel* that they have won. In any case, no dispute is ever *won* by negotiation; negotiation only *realises* what is won in struggle. In this sense, if the negotiators do their job well, each side gets neither more nor less than what they deserve.

(29) *Scripture*. It is surprising how people always never take the spoken word as seriously as the written, and especially *printed* word. Don’t just say something, lay a newspaper article saying the same thing on the table. A page from the union journal can have the same effect. And always get everything the bosses say in writing.



## “Dirty Tactics”

(30) *Gazumping*. Gazumping is the practice of reaching an agreement, and then as soon as the other side is committed to their side of the deal, you ask for more. This is a dangerous and deceptive tactic, which sometimes arises from a failure of communication with those being represented; agreement is reached at the table and then thrown out at the mass meeting (or in the CEO’s private office). When the union members genuinely reject a management offer, in full knowledge of what is at stake, then this is something a union negotiator should *welcome*. But if the rejection results from misunderstanding or misinformation, this can only weaken one’s negotiating position. Negotiators can avoid getting involved in a gazump which undermines their credibility by not double-guessing members’ reaction to an offer. Gazumping on the part of the employers must be stamped on ruthlessly.

(31) *Threats*. Another dirty tactic which can be used in negotiations is to threaten the negotiators either with something which affects them personally, or to withdraw from a previous agreement which would cause harm to their side, even if the matter is quite unrelated to the current dispute. The only response to threats of this kind is to immediately *go public*. The workers are bound to be outraged and will punish the employer for such methods. The danger of workers being intimidated by the threatened loss of an earlier gain has to be worn. Personal threats, like making public some embarrassing piece of personal information about a negotiator, blackmail in other words, can also only be dealt with by openness. If you have skeletons in the cupboard, then maybe you shouldn’t be a negotiator.

(32) *Golden Handshake*. While both negotiators and workers may get pleasure out of seeing the boss humiliated, it is not generally a good thing to rub his nose in it. If the other side in negotiations makes a significant concession, then you should make sure that they are able to keep up the appearance of having obtained a satisfactory outcome. Likewise, if your opponent paints themselves into a corner, it is much better to offer them a dignified way out, than to force them into a humiliating back down, which will leave them with the need for “pay-back” at a later date.

(33) *Sleeping with the Enemy*. Disputes and negotiations can involve a lot of personal abuse, animosity, slander, deception and so on. If the negotiators are obliged to have a continuing relation with their opponents in negotiations, the affect of actions taken during a dispute on future relations have to be taken into account. Sometimes a negotiator may decide that they have used up their credit and should bow out of future negotiations. But generally speaking, it is better to conduct oneself in negotiations in such a way that you are going to be able to negotiate again in future, even if you never get a promotion or pay-rise ever again. The main thing is that you must retain the trust of those you represent and for it to

be clearly seen and acknowledged that whatever you do is in line with the mood and wishes of those you represent; if they're angry, you're angry, if the workers want the boss abused, abuse them. So long as you retain the support of the workers, the bosses will have to deal with you. Outside union officials do not face quite the same pressures as the company's own employees, but on the other hand, because they are making a career in the business of negotiating, they are under pressure to retain good relations with the bosses.

## Completion

(34) *Never have a Deadline.* The worst possible position for a negotiator to be in is to have a deadline. If your opponent becomes aware that you *have to* get an agreement by such-and-such date or time, then they will simply sit tight until you run out of time. Never arrange to pick up the kids after work, if you are going to be negotiating. On the other hand, if your opponents have a deadline, you are in the box seat. Setting deadlines by, for example, setting a date for strike action if there is no agreement, is of course a tried and tested means of getting a deal, but use this measure with care. Only make the threat if you actually want to carry it out.

(35) *The Loose Ends.* What do you do when both sides are exhausted and need to settle for the time being, but there are still matters which cannot be agreed? If the outstanding issues are secondary, then these can be listed as "reserved" items, which both sides note as *not* having been agreed, and to be the subject of future negotiations, next time you go into dispute!

(36) *The Unspoken.* If however, the unsolved issues are *essential* matters, such as for example if the boss has failed to achieve their main objective, and you are not going to give way, but nor is the boss prepared to make a public declaration that they have not achieved their objective. This is especially relevant where you are negotiating with professionals and not the boss in person. The agreement needs to *look like* it meets the boss's objective, while in fact it doesn't. For a variety of different reasons it may be quite rational to draft an agreement which *deliberately* obscures the fact that one or more of the essential issues in dispute have not in fact been resolved. This can be achieved by careful use of ambiguous wording and motherhood statements. Ambiguous or meaningless statements in an agreement can provide the basis for the boss to settle and for the workers to achieve *their* objectives, so it would be stupid to reject such an agreement just because it "didn't make sense". On the other hand, negotiators must *explain* to the workers what such anomalies mean and why they have been included in a document. What it also means of course, is that at some later time, the ambiguous formulation may become the focus of a new dispute, but quite often, with the passage of time, the unresolved issue just fades away, and the deal stands.

(37) *Minority concerns*. It may be tempting (and the bosses will never miss the opportunity) to sacrifice issues which are of concern only to only a small minority of the workers, in order get a gain for everyone. For a Marxist, this is a “No-no”. If the bosses are determined to take back some condition enjoyed by only a few employees, and which does not affect everyone else, then the only way forward for them is to offer a *compensation* which benefits the *same group* of workers who are being targeted. It is then entirely up to the affected group of workers if they want to do the trade or not, and it’s no-one else’s business what they decide. You must *never* allow the bosses to play one group of workers off against another.

(38) *Packaging*. Most negotiations involve some degree of trade-off. i.e., giving up things which are important to the boss in order to gain things which are important to the workers. A union negotiator is not there however, to give up things which have been gained, possibly at great cost, in the past. If just “No” doesn’t work, then the best approach is to “package” measures. For example, never give up holidays in exchange for a pay rise. If the bosses want to take away a public holiday, then ask for annual leave in exchange; if the bosses want more shift-work, ask for shorter hours for shift-workers in exchange, and so on. This way, you never go backwards, only forwards or not at all.

### **Drafting Agreements**

(39) *Keywords*. It is very important for a negotiator to *listen* to what the other side is saying very closely. They may not clearly spell out what their objectives are in the negotiations, and careful listening is required to work out where an agreement can be reached. Closely related to this is paying attention to *key words*. Certain words may have a special significance for your opponent, and their inclusion in an agreement may, in the end, be all that is required to settle. On the other hand, these same words may be offensive to your side. It is always far preferable to be committed to the *content* not the *form* of the outcome. To be committed to getting certain *words* rather than *meaning* in an agreement is a serious weakness.

Wherever possible negotiators should try to avoid being mandated to a fixed form of words, as these words can then become a barrier to achieving a *real* outcome. Conversely, if a certain form of words is important to your opponents, then giving them the *words* while keeping the *real meaning* may be a very satisfactory outcome.

(40) *Whose draft to use?* Drafting an agreement always involves one side making a draft and then both sides haggling over changes in the wording. The boss’s draft is usually hopeless, and you will have no choice but to draft up what you want and

propose this document as the basis for discussion. However, as soon as the boss is within shooting range of a decent outcome, there are a lot of good reasons for using *their draft* as the working document. Firstly, whoever's draft is used feels a greater "ownership" over the document and is therefore more likely to agree to the outcome; secondly, agreements can often involve a lot of research, computation and so on, and it is better to use the boss's resources rather than the union's.

(41) *Subcommittees and Working Groups*. In complex negotiations it is often necessary to split negotiations up into parts, with different working groups working in parallel on different issues. It is usually the case that the bosses cannot find more than one or two skilled negotiators, and a good union should have lots of people able to negotiate effectively in the areas where they have knowledge. Thus, the union usually gains by this move. Nevertheless, it must always be made clear that *no agreement can be made in a working group*. Any agreements made may only be provisional, and brought back to the "main table" for decision. This measure is not only necessary, it also advantages the union, because it is much harder for the employer to back away from a concession made by one of their representatives than it is for the union, who after all, is relying on "amateurs".

See also: [Trade Unions](#), [Conflict Resolution](#), [Consensus Decision Making](#), [Democratic Centralism](#), [Group Dynamics](#), [Meeting Procedure](#).

*Further Reading:* Although negotiation is presented above in the particular context of union negotiation, it is an ancient art. See Sun Tzu's [The Art of War](#). Also Machiavelli's [The Prince](#) is particularly useful for understanding how the enemy works.

- CU note: Clausewitz "[On War](#)" might be a better choice than Sun Tzu.

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